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THACKER *v.* HUBARD & APPLEBY, Inc.

Jan. 24, 1918.

[94 S. E. 929.]

1. Appeal and Error (§ 956 (1*))—Pleading (§ 333*)—Time for Filing—Discretion of Trial Courts.—A large discretion is vested in trial courts in the matter of time for filing pleadings and when not controlled by statute their action will not be set aside unless plainly erroneous.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 455; 11 Va.-W. Va. Enc. Dig. 225.]

2. Pleading (§ 85 (3*))—Time for Defendant to Plead—Failure to Comply.—When the time limit for defendant to file his pleadings, prescribed in the order granting him continuance, has expired without his compliance, he may not demur or plead as a matter of right, but must show good cause why he has not complied with the order of the court, and, if he fails to do so, it may exclude his pleadings.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 225.]

3. Courts (§ 37 (2*))—Jurisdiction—Objection after Demurrer and Pleas.—After defendant's demurrer and pleas had been rejected because not filed in compliance with the court's order granting a continuance and prescribing the time for such filing, defendant was entitled to move to dismiss the proceeding because the court had no jurisdiction of the subject-matter.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 902, 904.]

4. Courts (§ 24*)—Jurisdiction—Subject-Matter—Consent.—If not fixed by the Constitution, the Legislature alone can determine of what subjects the several courts of the state shall have jurisdiction; no consent of the parties can confer it, and a judgment outside of the jurisdiction conferred by the Legislature is simply void.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 860.]

5. Courts (§ 37 (2*))—Want of Jurisdiction of Subject-Matter—Time for Objection.—Objection for want of jurisdiction of the subject-matter may be taken by demurrer, or motion, or in any way whereby the subject may be brought to the court's attention, and, if not brought to the attention of the trial court, may be noticed by the appellate court, of its own motion, for the first time.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 902.]

6. Mortgages (§ 280 (3*))—Assumption of Notes by Purchaser—Failure to Sign Deed—Simple Contract Debt.—Where the grantee of mortgaged premises did not sign the deed in which payment of certain notes was expressly assumed, but simply accepted it, his contract to pay the notes was not a specialty but a simple contract debt.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 65.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Mortgages (§ 292 (2)*)—Assumption of Mortgage Notes by Purchaser—Liability.—Under Code 1849, c. 116, § 2, providing that if a covenant or promise be made for the sole benefit of a third person, such person may maintain in his own name any action thereon, and independently of the statute, where defendant, as part of the consideration for his purchase of realty from the mortgagor thereof, agreed by parol to pay the mortgage notes, the mortgagee cannot sue at law on the promise to recover the deficiency between the amount of the notes and the money realized by sale of realty.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 67.]

8. Mortgages (§ 283 (1)*)—Sale by Mortgagor—Assumption of Debt—Relations of Mortgagor and Mortgagee.—No agreement between the mortgagor and his grantee that the latter shall assume the mortgage debt can change the relations of the mortgagor and mortgagee and require the latter to treat the mortgagor as a mere surety, without the assent of the mortgagee, but when the assent of the mortgagee has been given, equity, by a quasi subrogation, and to avoid a multiplicity of suits, gives to the mortgagee the benefit of all the collateral obligations for the payment of the debt which the surety or mortgagor holds for his indemnity.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 65, 67.]

9. Dismissal and Nonsuit (§ 73*)—Motion to Dismiss for Want of Jurisdiction—Matters Affecting Merits.—On motion to dismiss for want of jurisdiction of the subject-matter, matters affecting the merits of the case cannot be considered.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 683.]

Error to Circuit Court of City of Norfolk.

Proceeding by motion for judgment for money by Hubard & Appleby, Incorporated, against Thacker. To review a judgment for plaintiff, defendant brings error. Judgment reversed, without prejudice to plaintiff in equity.

Burrow & Spindle and *Jas. E. Heath*, all of Norfolk, for plaintiff in error.

Jas. G. Martin, of Norfolk, for defendant in error.

BUILDERS' SUPPLY CO. OF HOPEWELL, Inc. v. PIEDMONT LUMBER CO., Inc.

SAME v. PEERLESS LUMBER CO., Inc.

Jan. 24, 1918.

[94 S. E. 938.]

1. Courts (§ 12 (1)*)—Jurisdiction—Place of Business of Corporation.—Where a certificate of incorporation stated that the principal

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.